

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC.
NATIONAL PRESCRIPTION OPIATE
CONSULTANT LITIGATION

Case No. [21-md-02996-CRB](#) (SK)

This Order Relates to:
ALL ACTIONS

**PRETRIAL ORDER NO. 2: ORDER
APPOINTING PLAINTIFFS' LEAD
COUNSEL AND PLAINTIFFS'
STEERING COMMITTEE**

On July 29, 2021, the Court invited counsel for the various plaintiffs in this matter to apply for a Plaintiffs' Steering Committee ("PSC") or Lead Counsel position. Order re Plaintiff Leadership Applications (dkt. 158). The Court received a total of twenty-six applications and three responses. Having carefully considered them, the Court orders as follows.

I. LEAD COUNSEL

The Court appoints Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein, LLP as Plaintiffs' Lead Counsel and as Chair of the PSC. Ms. Cabraser has extensive experience with multi-district litigation, has held leadership positions in several different MDLs, including as a member of the Plaintiffs' Executive Committee ("PEC") in In re National Prescription Opiate Litigation, MDL No. 2804 (N.D. Ohio), and has the support of several of her fellow counsel in this MDL. The Court has first-hand knowledge of Ms. Cabraser's leadership abilities, having worked with her in her role as Lead Counsel and Chair of the PSC in Volkswagen "Clean Diesel", MDL No. 2672 (N.D. Cal.) and as a member of the PSC in In re Bextra and Celebrex Marketing, Sales Practices, and Products

Liability Litigation, MDL No. 1699 (N.D. Cal.). These experiences give the Court confidence that Ms. Cabraser will effectively represent and guide the plaintiffs toward a resolution that is in their best interests.

The Court vests Ms. Cabraser, as Lead Counsel and PSC Chair, with the authority and duty to coordinate and oversee the PSC responsibilities set forth below; to schedule PSC meetings and keep minutes or transcripts of these meetings; to appear at periodic Court-noticed status conferences and hearings; to sign and file all pleadings that relate to all actions; and to bind the PSC in scheduling settlement discussions and discovery, setting agendas, entering into stipulations, and in other necessary interactions with any other relevant parties. Ms. Cabraser shall also have the authority to retain the services of any attorney not part of the PSC to perform any common benefit work, provided the attorney so consents and is bound by the PSC's compensation structure. She shall perform other necessary PSC administrative and logistic functions and carry out any other duty as the Court may order.

Lead Counsel shall also do the following:

- Establish and maintain a depository for orders, pleadings, hearing transcripts, and all documents served upon plaintiffs' counsel, and make such papers available to plaintiffs' counsel upon reasonable request.
- Maintain, in conjunction with their accountant, records of receipts and disbursements advanced by PSC members and received by the PSC and report in writing to the PSC concerning disbursements and receipts.
- Designate counsel to schedule depositions, set agendas and otherwise interact with defense counsel, various plaintiffs' counsel, and any other relevant parties.

II. PLAINTIFFS' STEERING COMMITTEE

The Court appoints the following attorneys as members of the PSC:

Chair

Elizabeth J. Cabraser
Lief Cabraser Heimann & Bernstein, LLP

Embarcadero Center West
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339

NAS Children

Scott R. Bickford
Martzell, Bickford & Centola, APC
338 Lafayette Street
New Orleans, LA 70130

Independent School Districts

Cyrus Mehri
Mehri & Skalet, PLLC
1250 Connecticut Avenue NW
Washington, D.C. 20036

Indian Tribes

Lloyd B. Miller
Sonosky, Chambers, Sachse,
Miller & Monkman, LLP
725 East Fireweed Lane
Anchorage, AK 99503

Third Party Payors

James Dugan
The Dugan Law Firm, LLC
365 Canal Street, Ste 1000
New Orleans, LA 70130

Political Sub-Divisions

Aelish M. Baig
Robbins Geller Rudman & Dowd, LLP
One Montgomery Street, Ste 1800
San Francisco, CA 94104

Emily Roark
Bryant Law Center, PSC
601 Washington Street, P.O. Box 1876
Paducah, KY 42002-1876

Jayne Conroy
Simmons Hanly Conroy, LLC
112 Madison Avenue, 7th Floor
New York, NY 10016

Joe Rice
Motley Rice, LLC
28 Bridgeside Boulevard
Mt. Pleasant, SC 29464

Matthew Browne
Browne Pelican, PLLC
7007 Shook Avenue
Dallas, TX 75214

The PSC appointments are personal to the individual attorney appointed. While the Court has considered PSC members' resources and expects that they will draw upon their firms and co-counsel to assist them with their duties, each member is personally responsible for his or her duties. The Court may add or replace members upon request from the PSC, or on its own motion, if and as circumstances warrant.

It is intended and expected by this Order that—as to all matters common to the coordinated cases, and to the fullest extent consistent with the independent fiduciary obligations owed by any and all plaintiffs' counsel to their clients and any putative class—pretrial proceedings shall be conducted by and through the PSC.

The PSC is responsible for creating its own structure, including establishing subcommittees, subject to the Court's approval. The Court recognizes that changes to the PSC's organization may be necessary as the litigation progresses and new details emerge.

All time keepers carrying out work for the plaintiffs' common benefit, including PSC members, who may look to any common fund or agreement for reimbursement or compensation shall maintain detailed and contemporaneous time records. The Court will issue a subsequent Order regarding the guidelines and rules for work done and expenses incurred for the common benefit of all plaintiffs in this MDL.

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III. CASE MANGEMENT CONFERENCE

As discussed at the July 29, 2021 status conference, Lead Counsel and the PSC shall meet and confer with McKinsey as to:

- The process and schedule for briefing the effect of the settlement agreements for plaintiffs that McKinsey contends are bound by the settlements.
- The process and schedule going forward for plaintiffs that McKinsey does not contend are bound by the settlements.
- The status of the discovery that McKinsey has produced in In re National Prescription Opiate Litigation, MDL No. 2804 (N.D. Ohio) and has or will produce to the Attorneys General in connection with the settlements, including the timeline for producing the discovery in this action.

The parties shall file a joint written submission on **August 31, 2021** advising the Court of their determinations on these subjects. The Court will hold a case management conference on **September 2, 2021** via Zoom Webinar regarding the submission and any other matters that the Court deems appropriate.

IT IS SO ORDERED.

Dated: August 16, 2021



CHARLES R. BREYER
United States District Judge